



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0206; FRL-9954-83-Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Revisions to the New Source Review State Implementation Plan; Air Permit Procedure Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove severable portions of four revisions to the Louisiana New Source Review (NSR) State Implementation Plan (SIP) submitted by the Louisiana Department of Environmental Quality (LDEQ). Specifically, we are proposing to partially approve and partially disapprove provisions contained within the Chapter 5 air construction permit rules as initially submitted on November 15, 1993, November 10, 1994, November 9, 2007, and November 3, 2014. The EPA is proposing this action under section 110 and parts C and D of the Clean Air Act (CAA).

DATES: Comments must be received on or before **[insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2016-0206, at <http://www.regulations.gov> or via email to kordzi.stephanie@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Stephanie Kordzi, 214-665-7520, kordzi.stephanie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi, (214) 665-7520, kordzi.stephanie@epa.gov or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The Act at Section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review programs applicable to new and modified

stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Non-attainment NSR (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS), i.e., “attainment areas”, as well as areas where there is insufficient information to determine if the area meets the NAAQS, i.e., “unclassifiable areas.” The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS, i.e., “nonattainment areas.” The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located.

The EPA regulations governing the criteria that states must satisfy for the EPA approval of the NSR programs as part of the SIP are contained in 40 CFR Sections 51.160 - 51.166. In addition, there are several provisions in 40 CFR Part 51 that apply generally to all SIP revisions.

As stated above, 40 CFR Section 51.160 establishes the enforceable procedures that all NSR programs must include. Sections 51.160-51.164 require that a SIP revision demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Section 51.165 provides the minimum regulatory criteria for NNSR permitting programs and Section 51.166 provides the minimum regulatory criteria for approvable PSD permitting programs. Based upon our evaluation of the submittals, the EPA has concluded that three of the regulatory citations

identified in this action do not meet the requirements of the CAA section 110(l). Below are summaries of the individual SIP submittals from the Secretary of the LDEQ.

A. The November 15, 1993, Louisiana SIP Submittal

On November 15, 1993, the LDEQ submitted revisions to the SIP. This SIP submittal incorporated revisions to the Louisiana Administrative Code (LAC) during the year 1993. It includes from Chapter 5, final revised regulation Sections 501, 502, 503, 504, 505, 507, 511, 513, 515, 517, 519, 521, 523, 525, 527, 529, 531, and 533. The EPA acted on most of the rule language contained in these sections in its August 4, 2016, final notice. *See* 81 FR 51341 (August 4, 2016). The EPA is proposing action at this time on the portions of the November 15, 1993 submittal that were not included in our August 4, 2016 final action. This action is on those portions that were not included in that notice.

The EPA is proposing approval of LAC 33:III, Chapter 5, Sections 525.A., 525.A.1., 525.A.3., 525.B., 525.B.1., 525.B.2, 527.A., 527.A.1., 527.A.2., 527.A.3., 527.B., 527.BN.1., 527.B.2., 529.A., 529.A.1., 529.A.2, 531.B.2 and 531.B.3. The LDEQ withdrew LAC 33:III, Chapter 5, Sections 525.A.2., 525.B.2.c., 525.B.3., 525.B.4., 525.B.5., 525.B.6., 525.B.7., 525.B.8., 527.B.5., 529.B.1., 529.B.2., 529.B.3., 529.B.4., in its letter of July 14, 2016, due to the provisions applying only to Part 70 sources. The EPA is proposing disapproval of section 501.B.1.d. which adds “upsets” to the list of activities exempt from permitting requirements. The basis for our disapproval is that the rule references the definition of “upset” in LAC 33:III.507.J.1 which is not part of the SIP submittal; the definition of “upset” is part of Louisiana’s Title V program rules and mirrors the definition of “emergency condition” found at

40 CFR 70.6(g)(1), a rule which the EPA has proposed for removal from its Part 70 rules. See 81 FR 38645 (June 4, 2016).

The EPA is also proposing disapproval of the provisions for public notice that are inconsistent with federal laws and found in sections 513.A.1. and 531.A.1.

B. November 10, 1994, Submittal

On November 10, 1994, the LDEQ submitted revisions to the SIP. This SIP submittal incorporated revisions to the LAC published in the Louisiana Register on November 20, 1994. It includes final revised regulations at LAC 33:III, Chapter 5, Sections 501, 507, 517, 521, 527, and 533. The EPA acted on most of the rule language contained in these sections in its final notice 81 FR 51341 (August 4, 2016). This action is on those portions that were not included in that notice. The EPA is proposing to take action on sections 527.A.2., 527.A.2.c., 527.B., 527.B.1., 527.B.2.a., and 527.B.2.b. The EPA returned sections 507 and 533 rules due to their association with part 70 sources requirements to LDEQ on August 4, 2015.

C. The November 9, 2007, Louisiana SIP Submittal

On November 9, 2007, the LDEQ submitted the 2006 General Revisions to the Louisiana SIP. This SIP submittal incorporated revisions to the LAC during the year 2006 and revisions to the LAC not previously federally approved. It includes from Chapter 5, final revised regulation sections 501, 504, 509, 513, and 531. The EPA acted on most of the rule language contained in these sections in its final notice 80 FR 68451 (November 5, 2015) and final notice 81 FR 51341 (August 4, 2016). This action is on those portions that were not included in those notices. The EPA proposes approval for section 531.B.3. This action proposes for disapproval the provisions for public notice that are inconsistent with federal laws and found in sections 513.A.1.

D. The November 3, 2014, Louisiana SIP Submittal

On November 3, 2014, the LDEQ submitted the 2011-2013 Permit Rule revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the years 2011-2012. It includes from Chapter 5, final revised regulation sections 501, 502, 503, 504, 523, and 537. The EPA acted on most of the rule language contained in these sections in its final notice 81 FR 51341 (August 4, 2016). This action is on that portion that was not included in that notice. This action proposes disapproval of the provisions regarding section 501.B.1.d. which adds “upsets” to the list of activities exempt from permitting requirements. The basis for our disapproval is that the rule references the definition of “upset” in LAC 33:III.507.J.1 which is not part of the SIP submittal; the definition of “upset” is part of Louisiana’s Title V program rules and mirrors the definition of “emergency condition” found at 40 CFR 70.6(g)(1), a rule which the EPA has proposed for removal from its Part 70 rules. See 81 FR 38645 (June 4, 2016).

II. The EPA’s Evaluation

We evaluated the SIP submissions of the specific citations of the Louisiana Air Permit Procedure Revisions identified above and revised in the November 15, 1993, November 10, 1994, November 9, 2007, and November 3, 2014, submissions.

A. Revisions to the NSR Air Permit Procedures

We evaluated the SIP submissions and are proposing approval of the Louisiana Permit Procedures Revisions, as identified, beginning with the November 15, 1993, through the November 3, 2014, submissions.

Prior to this action, the EPA proposed full approval of the major PSD and NNSR and minor NSR permitting program update. Those actions were finalized on November 5, 2015 (80 FR 68451) and August 4, 2016 (81 FR 51341).

Our evaluation of the proposed NSR revisions found, with the exception of the items proposed for disapproval and discussed below, the proposed revisions address requirements that enhance the SIP. These changes proposed for approval, in general: (1) clarify the rules; (2) make the rules more consistent with Federal rules; (3) establish permit modification procedures; (4) establish reopening procedures; and (5) establish notification procedures of PSD permit actions to states outside of Louisiana.

- Proposed Disapproval: The EPA is proposing disapproval of the SIP revisions to section 501.B.1.d. submitted by the State of Louisiana on November 15, 1993, and updated on November 3, 2014. More specifically, Louisiana submitted a revision to LAC 33:III.501.B.1 that revises the list of specific activities that are exempt from the requirement to obtain a permit to add: *“d. any upset, as defined in LAC 33:III.507.J.1; however, the permitting authority shall be advised of such occurrences without delay, in accordance with all applicable upset or emergency provisions of Louisiana Air Quality regulations and of LAC 33.I. Chapter 39; . . .”* EPA’s interpretation of the CAA requirements for SIPs, including minor NSR permitting programs, is that upsets are generally not the kind of activities that are amenable to NSR permitting due to their nature of being unforeseeable, unpredictable, beyond the control of the owner or operator of the source. However, the reference to the definition of “upset” in LAC 33:III.507.J.1 is problematic because that definition is not in the Louisiana SIP or currently before EPA

for review, rather it is part of Louisiana's Title V regulations that are inconsistent with EPA's proposed rulemaking found in 81 FR 38645 (June 4, 2016), to amend its Title V regulations to remove the "emergency provision" found in 40 CFR 70.6(g) and 71.6(g). The "emergency provision" definition in 40 CFR 70.6(g)(1) mirrors LDEQ's definition of "upset" found in LAC 33:III.507.J.1, which is referenced in section 501.B.1.d. If finalized, that rulemaking would require LDEQ to also remove the affirmative defense language from its Title V rules, including the language at LAC 33:III.507.J which is part of Louisiana's approved Title V program.

- Proposed Approval: The EPA is proposing approval of sections 525.A.1. and 525.A.3. rules for incorporating minor modification procedures consistent with federal law. Section 525.A.1. pertains to the minor NSR permit program only.
- Proposed Approval: The EPA is proposing approval of sections 527.A. 527.A.1., 527.A.2., 527.A.2.a., 527.A.2.b., 527.A.2.c., 527.B., 527 B.1., B.2., B.3., and B.4., rules that incorporate significant modification procedures consistent with federal law.
- Proposed Approval: The EPA is proposing approval of sections 529.A., 529.A.1., 529.A.1.a., 529.A.1.b., and 529.A.2. for permit reopening for cause procedures consistent with federal law.
- Proposed Approval: The EPA is proposing approval of sections 531.B.2. and 531.B.3. for state permit notification procedures consistent with federal law.
- Proposed Disapproval: The EPA is proposing disapproval of Section 513A.1. based on this rule language referencing and relying on the discretionary public notice rule found in section 531.A.1 which is being proposed for partial disapproval. However, as stated

above, the currently approved SIP contains adequate public notice provisions for minor NSR sources.

- **Proposed Disapproval:** The EPA is proposing disapproval of section 531.A. based on the information in its March 3, 2003, letter to LDEQ, which is included in the docket. The EPA notified the LDEQ that 40 CFR 51.161(a) requires opportunity for public comment and applies to all proposed decisions concerning new and modified sources. As currently written, Louisiana's revised rule section 531.A. submitted on November 15, 1993, states: *"531.A. Public Notice 1. At the discretion of the permitting authority, public notice may be provided prior to issuance of any new or revised permit under this Chapter."* This discretionary language does not conform to the Federal requirements at Section 51.161. Section 51.161(a) provides: "The legally enforceable procedures in §51.160 **must** also require the State or local agency to provide opportunity for public comment on information submitted by owners and operators. The public information **must** include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval." (Emphasis added.) Section 51.161(a), clearly mandates that legally enforceable procedures require the State or local agency to provide opportunity for public comment. Thus the current language in 531.A. is not approvable under 40 CFR 51.161 as it allows the permitting agency discretion whether to provide for public notice.

B. Does the Proposed Approval of the Louisiana Minor and Nonattainment NSR Air Permit Procedure Revisions Interfere with Attainment, Reasonable Further Progress, or Any Other Applicable Requirement of the Act?

We have determined that the regulations submitted to the EPA and being proposed for approval as SIP revisions meet the requirements of CAA section 110(l). The EPA's conclusion is based upon a line-by-line comparison of the proposed revisions with the federal requirements. The goal is to demonstrate that the proposed revisions will not interfere with the attainment of the NAAQS, Rate of Progress, RFP or any other applicable requirement of the CAA. Most of the changes were not substantial. Our analysis shows that in most cases, the state regulatory language is consistent with and in support of the intent of the federal rules and definitions. The EPA is therefore proposing to approve these submittals.

III. Proposed Action

We are proposing to partially approve and partially disapprove the Louisiana SIP revisions submitted by the State of Louisiana in accordance with the EPA regulations at 40 CFR 51.160 - 51.164 and under Section 110 and part C of the Act, and for the reasons presented above and included in our accompanying TSD. Table 1 below summarizes the changes that are in the SIP revision submittals. The accompanying Technical Support Document (TSD) includes a detailed evaluation of the submittals and our rationale. The TSD may be accessed online at www.regulations.gov, Docket No. EPA-R06-OAR-2016-0206.

Table 1 - Summary of Each NSR SIP Submittal Affected by This Action Proposed Approval

Section	Date Submitted to EPA as SIP Amendment	Affected Regulation
Section 525 – Minor Modifications		
Section 525.A.	11/15/1993	Sections 525.A., 525.A.1., 525.A.3.
Section 525.B.	11/15/1993	Sections 525.B., 525.B.1. and 525.B.2.
Section 527 – Significant Modifications		
Section 527.A.	11/15/1993	Sections 527.A., 527.A.1., 527.A.2., and 527.A.3.
	11/10/1994	Sections 527.A.2., 527.A.2.c.

Section	Date Submitted to EPA as SIP Amendment	Affected Regulation
Section 527.B.	11/15/1993	Sections 527.B., 527.B.1., 527.B.2.a., and 527.B.2.b.
	11/10/1994	Section 527.B.
Section 529 – Reopenings for Cause		
Section 529.A.	11/15/1993	Sections 529.A., 529.A.1. and 529A.2.
Section 529.B.	11/15/1993	Sections 529.B., 529.B.1., 529.B.2., 529.B.3., and 529.B.4.
Section 531 – Public Notice and Affected State Notice		
Section 531.B.	11/15/1993	Section 531.B.2. and 531.B.3.
	11/9/2007	Section 531.B.3.

**Table 2 - Summary of Each NSR SIP Submittal Affected by This Action
Proposed Disapproval**

Section	Date Submitted to EPA as SIP Amendment	Affected Regulation
Section 501 – Scope and Applicability		
Section 501.B.	11/15/1993	Section 501.B.1.d.
	11/3/2014	Section 501.B.1.d.
Section 513 – General Permits, Temporary Sources, and Relocation of Portable Facilities		
Section 513.A.	11/15/1993	Section 513.A.1.
	11/9/2007	Section 513.A.1.
Section 531 – Public Notice and Affected State Notice		
Section 531.A.	11/15/1993	Section 531.A.1.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Louisiana regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because the portion of the rules that are proposed for approval do not contain any information collection activities and incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria.. Further, this action proposes to disapprove specific submitted revisions regarding discretionary public notice and upset that are not consistent with federal laws for the regulation and permitting of air emission sources.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action proposes to approve regulatory citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit

modification criteria, and permit reopening criteria. This action proposes to disapprove revisions regarding discretionary public notice and an exemption of upsets from permitting requirements that are no longer consistent with federal law for the regulation and permitting of air emission sources. Therefore it will have no impact on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources. It therefore will have no impact on small governments.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification

criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources. There are no requirements or responsibilities added or removed from Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action is not subject to Executive Order 12898 because it proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 16, 2016.

Ron Curry,
Regional Administrator, Region 6.